



EMPLOYMENT ALERT

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When you hear the whistle blow, be careful

Whistleblowing actions can lead to very significant financial awards. It is a common misconception that dismissal damages in whistleblowing claims can only be awarded against the employing company and not against individual employees.

Until 2018, that was correct: employees who subjected a whistleblower to a disadvantage could only be sued for 'detriment' - and detriment did not include dismissal. That all changed when the Court of Appeal held in the case of *Timis v Osipov* that it would be 'incoherent and unsatisfactory' for detriment not to include dismissal.

This personal liability can arise in two ways:

- when an employee has been a party to the decision to dismiss;
- when an employee's unlawful detrimental treatment of a whistleblower can be shown to have led to the dismissal.

The first example could apply not only where a manager decides to dismiss someone for having blown the whistle but also where a manager participates in that decision. The second example could apply when a whistleblower has been bullied by an employee to such an extent that they are incapable of continuing in work and are then dismissed for ill health reasons. The employee could be liable even if they had no part in the decision to dismiss.

We reported on this case back in 2018, so why raise it now? With so many people likely to have health and safety concerns about the return to work, it is a useful reminder that not only companies but also individual managers and directors can be held liable for the financial consequences of dismissing a whistleblower or subjecting them to a detriment because they have raised concerns. You can discipline a whistleblower for any wrongdoing and you can make them redundant. These actions though must not be because they blew the whistle.

In terms of the return to work, ultimately you can discipline a whistleblower (or any other employee) who is unreasonable in refusing to return to the office. But if you have not carried out a proper health and safety review of the workplace in accordance with government guidelines and using a risk assessment, remember that the refusal is likely to be reasonable. Any dismissal of the employee would then be an unfair one.

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